



ANTICORRUPTION CITY TOOLKIT

ACCESS TO INFORMATION TOOL

GUIDE ON THE KEY ELEMENTS OF THE RIGHT OF ACCESS TO INFORMATION

INDEX

1. What is the right of access to information and who are the beneficiaries of this tool?.....	2
2. The Right of Access to Information: The Basics	3
2.1 Which information?.....	3
2.2 What does “held” mean?.....	3
2.3 Who may request information?	3
2.4 Which bodies have to comply with the right of access to information?	3
2.5 How should requests be formulated and submitted?.....	4
2.6 The duty to assist requesters.....	4
2.7 Confidentiality.....	4
2.7 Timeframes for responding to requests.....	5
2.8 Acknowledgements.....	5
2.9 Responses	5
3. Exceptions.....	7
3.1 Standard Exceptions and how to apply them	7
3.2 Vexatious requests	7
4. Proactive Publication.....	9
5. Compliance Statistics.....	12

1. WHAT IS THE RIGHT OF ACCESS TO INFORMATION AND WHO ARE THE BENEFICIARIES OF THIS TOOL?

This section briefly defines the right of access to information, as established by international standards, and explains how it applies to municipalities, as well as how the ACT Access to Information tool can be used to evaluate compliance with this fundamental human right.

Access to information is an internationally-recognised fundamental right that allows citizens to access data, information or documents produced or held by public administrations, as well as any natural and legal persons operating with public funds or performing public functions (herein after collectively referred to as “public body”).

Under this right, person - regardless of their citizenship or residence status - can request information, without the need to provide a motivation for the request, and is entitled:

- » To be informed in writing by a public body as to whether it holds the requested information; and
- » To have such information communicated to them, with only limited exceptions, which must be permitted by international standards, must be specifically laid down in law and must be subject to both harm and public interest tests.

All public authorities are obliged to give effect to this right, through what are known as access to information laws, sometimes also referred to as freedom of information acts.

The ACT Access to Information Tool evaluates the extent to which a particular public body is complying with this legal obligation, and generates recommendations as to how it can improve its legal framework and/or its internal systems in order to ensure full enjoyment of this fundamental right. The ACT Access to Information Tool is designed specifically for use by local government bodies, such as municipalities and regional governments, to conduct this self-assessment. The recommendations that are generated by the ACT Access to Information Tool will permit a municipality to align its access to information rules with the highest international standards and best practices.

2. THE RIGHT OF ACCESS TO INFORMATION: THE BASICS

In this section we set out in depth the main elements of access to information laws, in order to guide those who will respond to the questions in the ACT Access to Information Tool.

2.1 Which information?

The right of access to information applies, in principle to all information held by a public body. The legal framework should make clear that “information” or “documents” means any recorded information held in any form, such as printed on paper or stored in electronic format, or as a sound, visual or audio-visual recording.

There is no obligation to create new information in order to comply with a request for information, but, if the information that responds to the request can be compiled from document held, then this should be done. Similarly, if the information can be extracted from a database using a relatively easy search script, then this should be done.

2.2 What does “held” mean?

The requested information is considered ‘held’ for the purposes of access to information laws when it meets one of the following criteria:

- » The information is in the possession by the municipality at the time of the request;
- » The information stored electronically, be it on a computer inside the offices of the public body or in off-site servers or cloud storage;
- » The information is held by other organisations and authorities on behalf of the municipality;

2.3 Who may request information?

Any natural or legal person – regardless of their citizenship status or country of residence – has the right to request information from any public body. There should never be any requirement to prove identity nor to justify the reasons for the request.

It is noted that, at a practical level, requesters will need to use one of the official languages in which the public body works. That said, many countries around the world have public bodies which also accept requests in English.

2.4 Which bodies have to comply with the right of access to information?

The right of access to information applies to all public bodies. The UN Human Rights Committee

has defined the right as applying to “All branches of the State (executive, legislative and judicial) and other public or governmental authorities, at whatever level – national, regional or local – are in a position to engage the responsibility of the State party.”

It is normal for access to information law to apply to all bodies that operate with public funds or perform public functions or services. In some cases, the access to information law will extend to other private bodies where there is a particular public interest in ensuring transparency.

2.5 How should requests be formulated and submitted?

There should be no formal requirements for what should be included in a requests, beyond the name and an address (postal or email) of the requester, plus a description of the information or documents being sought. There should be no requirement to mention the legal basis for the request. There should never be a requirement to justify why the information is wanted, nor how it will be used.

The law should make it optional for requester specify the preferred format for receiving the information (for example, printed or electronic format). The public body should be obliged to provide information in the requested format, including requests for electronic records, if these exist or can easily be generated.

Access to information requests should be permitted through any available means, written or oral. The public body should provide a postal address and an email address to which applicants can send requests for information, or ask for assistance in formulating the request. A public body can also offer online forms.

2.6 The duty to assist requesters

Public bodies should be obliged by law to provide guidance and assistance to the requesters.

When a person is unable to file their request in writing, for example due to a disability, the public authority should make sure that proper assistance is given to enable them to make a request for information.

2.7 Confidentiality

The public official in charge of processing requests should ensure protection of the requester’s personal data, as should any other public officials who handle the request in the course of answering it.

This protection must be upheld if the request requires consultation with third parties (for example, with businesses), to whom the name of the requester should never be given.

Similarly, if information is held by external contractors on behalf of the public body, the name of the requester should not be provided to the external company.

2.7 Timeframes for responding to requests

The law should establish the maximum timeframe for responding to a request. International standards and comparative law show that the maximum is between 15 to 20 working days (three weeks to one month). Across the European Union the average is 15 working days, or three weeks.

This time limit should start counting from the day that the request is submitted (electronic submission) or the day it is received (postal delivery). Every effort should be made to answer requests as soon as possible, only reaching the maximum timeframe in exceptional cases.

If a public body has some of its information stored with or managed by external contractors, it should ensure that the contract stipulates that the information must be provided rapidly, in order to permit the public body to comply with the timeframes under the law.

The law should allow for a one-time extension of this timeframe, by another period of up to 20 working days, in exceptional cases, such as a complex request that involves a large number of documents.

2.8 Acknowledgements

It is good practice to issue an acknowledgement as soon as a request is received. This acknowledgement should include a tracking reference number, a contact email and/or telephone number, and information about the requester's rights under the law, such as the right to appeal in the case of administrative silence.

2.9 Responses

There are various possible responses to an access to information request. One is to provide the information, another is to inform the requester that the information is not held. In some cases, access to information will be refused, in part or in full (See Point 3 on Exceptions).

The information should be provided in the format signalled by the requester in his or her request. Even when this has not been specified, the format should be one that is machine readable (so

not, for example, a scanned PDF). Data should be provided in open data formats, under licenses which allow for reuse.

Requesters should always be free to use the documents and data that they have received in any way they wish. After all, information released to one person can be released to anyone else, so it does not matter if the information is shared or published online.

In every case, the public body should also provide the requester with information on how to appeal in case that they should be unhappy with the response received. This should include details of internal reviews of the decision (should that be an option), or an appeal to an oversight body (information commissioner or similar) and/or to the courts.

3. EXCEPTIONS

3.1 Standard Exceptions and how to apply them

All information held by public bodies is considered to be, prima facie, public. International standards do, however, permit access to be denied to certain information provided that the release of the information would (a) harm a legitimate protected interest, and (b) that there is no overriding public interest in disclosure.

The Council of Europe Convention on Access to Official Documents lays out a set of limitations that are standards in access to information laws. These are:

- i) national security, defence and international relations;
- ii) public safety;
- iii) the prevention, investigation and prosecution of criminal activities;
- iv) disciplinary investigations;
- v) inspection, control and supervision by public authorities;
- vi) privacy and other legitimate private interests;
- vii) commercial and other economic interests;
- viii) the economic, monetary and exchange rate policies of the State;
- ix) the equality of parties in court proceedings and the effective administration of justice;
- x) environment; or
- xi) the deliberations within or between public authorities concerning the examination of a matter.

Whenever access to information is denied, in whole or in part, the public authority must explain to the requester the reasons for the denial of full disclosure. This justification must include the legal basis for the refusal (the relevant article of the relevant law), and an explanation of how and why a particular interest is harmed as well as evidence of due consideration of the public interest test.

3.2 Vexatious requests

Some access to information laws also permit public bodies to refuse to process requests that are deemed to be in some way “vexatious” or “obstructive”. The precise term used will depend on national law.

The refusal to process a request should be something that occurs very rarely, when the nature of

the request makes it impossible to answer it, or because it contains highly offensive language or threats, and/or when the ongoing interaction with a requester become a burden on the public authority.

A public body should always endeavour to assist requesters formulate requests appropriately and clearly, and there should be an effort to provide the requester with the information being sought, should this be clear.

In the case of a refusal to process a “vexatious” request, a solid justification must be provided, and the requester must receive information about the appeals process.

4. PROACTIVE PUBLICATION

International standards make clear that the right of access to information is one which imposes positive obligations on public bodies to publish information proactively. In other words, the right of access to information should not rely on having to make requests.

The information to be published should relate to the functioning of the public body and should include information that permits the public to follow decision making and to hold the body to account for how it operates and how it spends public funds.

The core elements of any rules on proactive publication should include:

- **Institutional Information:** Legal basis of the institution, Internal regulations, Description of functions and powers.
- **Organisational Information:** Organisational structure, which should include key personnel, such as the head of the body and each department, Property (real estate) held by the public body.
- **Operational Information:** Strategy and plans (annual and multi-annual), Programmes with specific goals, activities, Evaluations of compliance and results.
- **Policies, Acts, Decisions:** Decisions, regulations, resolutions, agreements, other formal acts, particularly those that directly affect the public and/or constitute an interpretation of law or have legal effects.
- **Budget Information:** Budget - planned and actual; Income from all other sources (services, property, international organisations, etc.); Expenditure reports, detailed, regularly updated, and available for previous years; Audit reports and evaluations (all historic copies must be available).
- **Public Procurement and Contracts:** Detailed information on public procurement processes, criteria, number of participants, amounts tendered, and outcomes of decision-making on tender applications with details of the bid and the awardee; Information regarding minor contracts (those issued with no tender process) with the names of contractors, values of contract, details of work to be performed; Information on other agreements signed, with details on parties, purpose, value, term of duration, and amendments; Copies of contracts and agreements, interim reports, modifications of contracts, interim and final evaluations, and reports on completion of contracts, audit reports.
- **Grants and Subsidies:** Information on the beneficiaries of grants and subsidies, the objectives, amounts and reports on implementation and evaluation.

- **Expenditure on Travel, Missions, Entertainment:** Travel expenses (transport, accommodation, meals, entertainment, other) of all senior and mid-level public officials; Summary of expenditure of all other public officials on meetings, events, and entertainment expenditure.
- **Public Officials:** Names of senior personnel and their responsibilities along with their profiles, career information; Salaries of all elected officials, senior public officials (including politically appointed advisors), directors of publicly run private companies, etc.; Salary scales by posts for all other officials; Assets declarations and conflict of interest declarations of all elected officials, senior public officials (including politically appointed advisors), directors of publicly run private companies, etc.
- **Open Meetings:** Information on meetings including which are open meetings and how to attend these meetings.
- **Decision-Making & Public Participation:** Copies of draft policies, decisions, and regulations along with evidentiary reports and impact assessments being used in the decision-making process, along with the time lines and decision-making moments, so as to permit public comment; Information on how to participate in structured consultation processes and, after each process, a report on how the public input was taken into consideration.
- **Interest Groups & Lobby Transparency:** The agendas of all senior public officials; Minutes of all meetings held with lobbyists and other interest groups; Institutional / national lobby register.
- **Public Services, Complaints, Whistleblowers:** Descriptions of services offered to the public, guidance, copies of forms, information on fees and deadlines; Contact information for public, including citizen support/information service; Information on how to make formal complaints about the body, including institutional level mechanism and/or contact information of a relevant ombudsman's office or similar.
- **Datasets & Statistics:** Datasets and statistics gathered by the body should be indicated on the website of the body, and either available for download or with links to the relevant open data portal.
- **Publications:** Information on publications issued, including whether publications are free of charge or the price if for sale.
- **Transparency & the Right to Information:** Information on the right of access to information and how to request information, including contact information for the responsible person in each public body; Publication of requests received, information



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requested, appeals and outcomes; All information that is frequently requested (for example three or more times); Statistics on requests.

5. COMPLIANCE STATISTICS

Public bodies should consider publishing details of their performance on handling requests for information. This data should include:

- » The number of requests received;
- » The timelines responses;
- » The number of requests where the information was fully granted;
- » The number of requests where the information was partially granted;
- » The number of requests where access to information was denied;
- » The number of times that decisions were appealed (either internal reviews or appeals to oversight bodies or to the courts) and the outcomes of these appeals.